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# HOUSE BILL No. 1086

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## DIGEST OF INTRODUCED BILL

**Citations Affected:** IC 6-8.1-10-2.1.

**Synopsis:** Penalties for failure to pay state taxes. Provides that a penalty for failure to pay tax by the due date is reduced to 5% of the amount of tax due if the person pays the full amount of the tax owed not more than 30 days after the due date. (Current law provides for a 10% penalty on the amount of tax owed if the payment is made any time after the due date.)

**Effective:** July 1, 2008.

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**Burton**

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January 8, 2008, read first time and referred to Committee on Ways and Means.

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Introduced

Second Regular Session 115th General Assembly (2008)

PRINTING CODE. Amendments: Whenever an existing statute (or a section of the Indiana Constitution) is being amended, the text of the existing provision will appear in this style type, additions will appear in **this style type**, and deletions will appear in ~~this style type~~.

Additions: Whenever a new statutory provision is being enacted (or a new constitutional provision adopted), the text of the new provision will appear in **this style type**. Also, the word **NEW** will appear in that style type in the introductory clause of each SECTION that adds a new provision to the Indiana Code or the Indiana Constitution.

Conflict reconciliation: Text in a statute in *this style type* or ~~this style type~~ reconciles conflicts between statutes enacted by the 2007 Regular Session of the General Assembly.

## HOUSE BILL No. 1086

A BILL FOR AN ACT to amend the Indiana Code concerning taxation.

*Be it enacted by the General Assembly of the State of Indiana:*

1       SECTION 1. IC 6-8.1-10-2.1, AS AMENDED BY P.L.211-2007,  
2       SECTION 44, IS AMENDED TO READ AS FOLLOWS [EFFECTIVE  
3       JULY 1, 2008]: Sec. 2.1. (a) If a person:

- 4               (1) fails to file a return for any of the listed taxes;  
5               (2) fails to pay the full amount of tax shown on the person's return  
6               on or before the due date for the return or payment;  
7               (3) incurs, upon examination by the department, a deficiency that  
8               is due to negligence;  
9               (4) fails to timely remit any tax held in trust for the state; or  
10              (5) is required to make a payment by electronic funds transfer (as  
11              defined in IC 4-8.1-2-7), overnight courier, or personal delivery  
12              and the payment is not received by the department by the due date  
13              in funds acceptable to the department;

14       the person is subject to a penalty.

15       (b) Except as provided in ~~subsection~~ **subsections (g) and (k)**, the  
16       penalty described in subsection (a) is ten percent (10%) of:

- 17              (1) the full amount of the tax due if the person failed to file the



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return;

(2) the amount of the tax not paid, if the person filed the return but failed to pay the full amount of the tax shown on the return;

(3) the amount of the tax held in trust that is not timely remitted;

(4) the amount of deficiency as finally determined by the department; or

(5) the amount of tax due if a person failed to make payment by electronic funds transfer, overnight courier, or personal delivery by the due date.

(c) For purposes of this section, the filing of a substantially blank or unsigned return does not constitute a return.

(d) If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on the person's return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

(e) A person who wishes to avoid the penalty imposed under this section must make an affirmative showing of all facts alleged as a reasonable cause for the person's failure to file the return, pay the amount of tax shown on the person's return, pay the deficiency, or timely remit tax held in trust, in a written statement containing a declaration that the statement is made under penalty of perjury. The statement must be filed with the return or payment within the time prescribed for protesting departmental assessments. A taxpayer may also avoid the penalty imposed under this section by obtaining a ruling from the department before the end of a particular tax period on the amount of tax due for that tax period.

(f) The department shall adopt rules under IC 4-22-2 to prescribe the circumstances that constitute reasonable cause and negligence for purposes of this section.

(g) A person who fails to file a return for a listed tax that shows no tax liability for a taxable year, other than an information return (as defined in section 6 of this chapter), on or before the due date of the return shall pay a penalty of ten dollars (\$10) for each day that the return is past due, up to a maximum of two hundred fifty dollars (\$250).

(h) A corporation which otherwise qualifies under IC 6-3-2-2.8(2) but fails to withhold and pay any amount of tax required to be withheld under IC 6-3-4-13 shall pay a penalty equal to twenty percent (20%) of the amount of tax required to be withheld under IC 6-3-4-13. This penalty shall be in addition to any penalty imposed by section 6 of this chapter.

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1 (i) Subsections (a) through (c) do not apply to a motor carrier fuel  
2 tax return.

3 (j) If a partnership or an S corporation fails to include all  
4 nonresidential individual partners or nonresidential individual  
5 shareholders in a composite return as required by IC 6-3-4-12(h) or  
6 IC 6-3-4-13(j), a penalty of five hundred dollars (\$500) per partnership  
7 or S corporation is imposed on the partnership or S corporation.

8 **(k) If a person subject to a penalty for any of the reasons set**  
9 **forth in subsection (a)(1) through (a)(5) pays the full amount of the**  
10 **tax owed not more than thirty (30) days after the associated due**  
11 **date, the penalty is five percent (5%) of:**

12 **(1) the full amount of the tax due if the person failed to file the**  
13 **return;**

14 **(2) the amount of the tax not paid, if the person filed the**  
15 **return but failed to pay the full amount of the tax shown on**  
16 **the return;**

17 **(3) the amount of the tax held in trust that is not timely**  
18 **remitted;**

19 **(4) the amount of deficiency as finally determined by the**  
20 **department; or**

21 **(5) the amount of tax due if the person failed to make payment**  
22 **by electronic funds transfer, overnight courier, or personal**  
23 **delivery by the due date.**

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